

FILED
DEC 14 2004
CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

* * * * *

JAMES F. MUNDT aka
JAMES MUNDT,
Plaintiff,
-vs-
GUARANTY NATIONAL INSURANCE
COMPANY, a corporation,
Defendant.

Civ. 04-1027

NOTICE OF REMOVAL

* * * * *

TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
DAKOTA, NORTHERN DIVISION:

Guaranty National Insurance Company (Guaranty), which
has been named as the defendant in the above-captioned action,
hereby files this Notice of Removal and removes this action from
the Circuit Court of the State of South Dakota, County of
Marshall, Fifth Judicial Circuit, pursuant to 28 USC § 1441 and
§§ 1446(a) and (b), and the Local Rules of this Court, and states
as follows:

1. Plaintiff served a Summons and Complaint on
November 12, 2004, venued in the Circuit Court, Fifth Judicial
Circuit, Marshall County, South Dakota, entitled James F. Mundt
aka James Mundt, plaintiff, vs. Guaranty National Insurance
Company, a corporation, defendant, Civ. 04-_____.

2. Guaranty is the sole defendant.

3. All state court papers served on Guaranty at the
time of removal, consisting of the Summons and Complaint, are
attached.

4. The Complaint seeks recovery for underinsured motorists benefits. The actual amount of damages claimed is unknown; however, it is believed that such damages are claimed to be at least \$75,000.00, exclusive of interest and costs.

5. On information and belief, the plaintiff is a citizen of the United States and the State of South Dakota.

6. Complete diversity exists as Guaranty is incorporated in the State of Colorado and has its principal place of business in Engelwood, Colorado.

7. This Court would have had original subject matter jurisdiction of this action under the provisions of 28 USC § 1332 if the action had originally been brought in federal court. Removal is, therefore, proper under 28 USC § 1441(a).

8. Removal of this case on the basis of diversity of citizenship is not precluded by the provisions of § 1441(b) of Title 28 of the United States Code because none of the parties in interest properly joined and served as a defendant is a citizen of the State of South Dakota, the state in which the action was brought.

9. This Notice of Removal is timely under § 1446(b) of Title 28 of the United States Code because the plaintiffs' initial pleadings in this action were served on November 12, 2004. This Notice of Removal is filed within thirty (30) days of receipt of the Summons and Complaint and within one (1) year of

the commencement of this action, so that it is timely filed under 28 USC § 1446(b).

10. Simultaneously with the filing of this Notice of Removal, a copy of this Notice has been mailed to the plaintiff's attorney, and a copy has been filed with the Clerk of the Circuit Court, Fifth Judicial Circuit, Marshall County, South Dakota.

WHEREFORE, defendant Guaranty hereby removes this action to this Court for further proceedings.

Dated at Aberdeen, South Dakota, this 13th day of December, 2004.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By 

Attorneys for Defendant

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. (605) 225-6310

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for defendant, hereby certifies that on the 13th day of December, 2004, a true and correct copy of **NOTICE OF REMOVAL** was mailed by first-class mail to:

Mr. Danny R. Smeins
Attorney at Law
Post Office Box A
Britton, SD 57430-0318

Ms. Kim Burger
Marshall County Clerk of Courts
Post Office Box 130
Britton, SD 57430

